

Old *Andrew Barrett*, Esq; his Will, whereby he Intails all his Estate on his Seven Sons, and to their Heirs Males; who was great Grandfather to Sir *William Barrett* who made the Will in *Bristol*, by which Capt. *St. Leger* claims only his Right; which abovesaid Old *Andrew* was also Great Grandfather to the Appellant *John Barrett*, Esquire.

**I**N the Name of God, Amen, I Andrew Barret of Ballincolly in the County of Cork, Esq; being at this present God be praised in perfect health, and ready to depart for England, have thought fit for avoiding of such dangers and inconveniences as might befall, do make this my Last Will and Testament for the direction of the Estate that it pleased God to lend me, and disposing of the same in the best manner that in so short a time I could call to mind. First, I commend and commit my Body and Soul to Almighty God, whose Divine Spirit, Grace and Assistance, I humbly implore to guide, direct and accompany me for my defence against all wicked spirits, and the suggestions of my spiritual Enemy. And whereas I have Infeoffed my Cousin Mr. Patrick Roch Fitz Morice, by my Deed dated the ninth of this present month and year, of all the Mannors, Castles, Towns, Lands and Tenements, expressed and mentioned in the said Deed, to the use and uses of my last Will and Testament. And now my will is, that the said Patrick his Heirs and Assigns, shall stand and be seized of all and singular the said Mannors, Castles, Towns, Lands and Tenements, and Hereditaments, except such Lands as I have past for my Wife Katharine Barrets Jointure during her life only, and such Portions as I have made assurance of for my beloved Daughter Gennet Sarsfield, during the continuance thereof, and such Mortgages as I have made and stand now in force during the continuance of the same to the use of payment of all debts that shall lawfully appear to the said Patrick to be due upon me by specialty or otherwise; and after taking order for such payments, then to stand seized for preferment of both my Daughters, Ellen and Ellyne in manner following: Vid. for Ellen my Eldest Daughter whom I love, and offended me not, if she shall be matched with the advice and consent of her Mother, her brother James, and their friends, Three hundred pounds, I mean no Irish money, but the best Coyn; and for my Youngest Daughter Ellyne, whom I also love, matching as before, Two hundred pounds of the best Coyn. My Will is, that my Daughter Ellens Portion shall be increased to Two hundred pounds, which preferments are thus to be rated, vid. the Aids due upon my Tenements to be levied; and if her Match be to her friends liking, fifty pounds more, being duly raised of what shall remain to be paid out of the rents and profits of the said Lands in this Mannor, vid. out of my Wifes Jointure (being too great for my Estate) if I had not great respect (as I ought to have of her) the third part of the said overplus of preferments; and out and from my Son and Heir James Barrett two parts; and all the said payments and preferments so paid, then my will is that the said Patrick his Heirs and Assigns shall be seized of all the Premises, (except before excepted) and the four Plow-lands of Garriadin, Ballivillum, Ballivorinse, Balluveran, Kileuomly, and Killmyllion, to the only use and behoof of my Son and Heir James Barrett & to the Heirs Males lawfully by him to be begotten on the body of my loving Daughter Gennet Sarsfield, and for want of such Heirs Males of the body of the said Gennet by him, to the Heirs Males of his body on the body of any other Wife lawfully to be begotten; and for want of such Heirs Males of his body, to the use of John Barrett my second Son, and the Heirs Males of his body lawfully to be begotten, and for want of such Heirs Males of the said John's body, to the use of Edmond Barrett my third Son, and the Heirs Males of his body lawfully to be begotten; and for want of such Heirs Males of the said Edmonds body, to the use of William Barrett my fourth Son in like manner as before, if he become not a Priest or Spiritual man, as is intended; and if he become a Priest or Church-man, or otherwise want Heirs Males of his body lawfully begotten, then to the use of Richard Barrett my fifth Son, and the Heirs Males of his body lawfully to be begotten; and for want of such Heirs Males of the said Richard's body, then to the use of Robert Barret my sixth Son, and the Heirs Males of his body lawfully begotten or to be begotten; and for want of such Heirs Males of the said Robert's body, to the use of Andrew Barret my seventh Son, and the Heirs Males of the said Andrew's body to be begotten; and for want of such Issue, to the use of my right Heirs for ever. And further, my will is, that my said Son and Heir James Barrett, shall after my Wifes death, and after determination of all other Estates in being



before the making of these presents, shall as my lawful Heir hold and enjoy the same. And I also do declare in way of truth, and upon my Soul before God, that the said James is my lawful Heir born in lawful Matrimony in due time after the Marriage solemnized betwixt me and his Mother; which protestation I herein make in respect that I was enforced by the iniquity of the time to make a Marriage clandestine, and not in any Parish-Church. And for avoiding any false calumniation that any malicious head might hereafter cast upon my said Son, I thought good to make good this declaration, That the said Marriage was solemnized at Ballincolly by William O Kelleghir, alias William Owir Priest, in presence of Donnogh, Mack Cormuck, Mack Teige, his Mother Ellen Barrett yet living, Margery Roch my Mother-in-Law, Henry Barrett, my Brother William Barrett, my Sister Ellen Barrett, my Gossip William Fild, Fitz-Morrice, James Oge Barrett of Carrihine, and divers others. Also my Will is, that my said Son James shall by way of Annuity pay unto my Son Edmond Barrett during his natural life 20 l. ster. per ann. and to every of my other Sons (except John Barret, 10 l. sterl. for their Schooling and bringing up) my Will is, that the said several Annuities bequeathed to my Son Edmond and his other young Brothers, shall be levied out of my Rents by my Feoffees, and converted to their several uses. Also my will is, that the said Patrick and his Heirs shall stand seized of the said four Plow-lands of Garriadin, Ballivillon, Ballivornisse, Balliverran, Killvoniti, and Killmillion, with their Appurtenances, to the use and behoof of my second Son John Barrett, and the Heirs Males of his body to be begotten for ever; and for want of such Heirs Males to the use of the said Edmond my third Son, in such manner and form as the remainders in use are limited to give successively to all my said younger Sons, and for want of Heirs Males of any of their bodies, then to my Son James and his Heirs for ever. And as for my Moveables, I know so little of them, that I wish they had been better for my wife; only if there be any thing that may be thought a Principal, my Heir to have the same, and my Sister Ellen to have 10 l. ster. and my Clothes to be disposed as my Son James and Patrick Roch shall think fit; remembring that Patrick Roch shall have, if I leave a pair of silk Stockings, & 20 sh. to buy a Ring, and the Poor to have twenty Nobles to pray for me. This my Will being made in time of some trouble, and in haste, I commend unto my own Son James by the advice of my best friends to supply the same in all the defects thereof; to perform such things as shall be thought I should have done, which he is the rather to see done with loving care, because in love he hath been the chiefest care; I make him my Executor, and leave my blessing with as much as I might to him, and my Daughter Gennet, whom I command him by the duty of a Son to a loving Father, tenderly to love and cherish. Witness hereof, I have subscribed my Hand, and put my Seal, at Dublin, the ninth of July 1613, Andrew Barrett. In cujus rei Testimoniam Sigill' Officii nostri presentibus apponifecimus Dat' apud St. Finbary Cork Vicesimo primo, die mensis Augusti Anno Domini Millimo Sexentimo Septuaginto Septimo

Rich. Sampson, Not. Pub. Dep. Reg.  
Francis Synge, Vicar-General.

We the under-named have compared this with the Record remaining in the Registry of the Consistory-Court of Cork, as witness our hand the 10th. of Sept. 1677.  
Mathew Dean. Thady Callaghane. John Callaghane.

Compared with the Registry-Book the 16th. day of October, 1680. Witness our Hands,

Dan. Denaghy. John Stroude.

This Intail is found per two Inquisition<sup>n</sup>, or Offices, post mortem, and appears on record in the Rolls-Office in the high Court of Chancery of Ireland, the one taken the 18th year of King James, and the other in the fifth year of King Charles the First of blessed Memory, and in the Offices sets forth the Deed of Feoffment to Patrick Roch, and this very Intail and Settlement; and also declares, that this Will is Recorded in the Registry of the Consistory-Court in Cork; which Records may be produced. And Sir William Barrett some short time before his Death was Sued in the High Court of Chancery by one Coppenger about a Portion, and brought upon his Oath; who then swore his Estate was Intailed; and then sets forth for the better certainty, and refers to the above said Intail, and the said two Inquisitions which we have to produce under the Clerk of the Rolls-Office in Ireland, may appear; and yet Capt. St. Leger would have this Estate from the Heir Intail, whom he was only left Guardian unto, and did enter into Articles to perform the Trust, and did prefer a Bill in Equity against his own Sister in the Right of the said Barrett as Guardian; and in which Bill sets forth him to be Heir-Intail, and also sets forth the said Inquisitions and Will aforesaid, which are likewise now produceable.

Here





Here followeth the several Opinions of Sir *John Maynard*, Sir *William Jones*, Sir *Francis Winnington*, Mr. *Heneage Finch*, Solicitor-General, Sir *John Churchill*, Mr. *Antho. Keck*, upon the Case stated, in the Cause wherein *John St. Leger* is Plaintiff, and *John Barrett* and others Defendant, whether the Cause was proper in a Court of Equity, or at Common Law.

Serjeant *Maynards* Opinion.

**T**Here be two Points of Fact on which this Case depend and turns, viz. 1. Whether *Andrew Barrett* was seized in his own right, or in right of his Wife *Katharine*; for if he was not seized in his own right, he could not devise the Land by his Will. And admitting that he was seized in his own Right, yet whether he made such Will or no.

But those two Questions of Fact are only triable and determinable at the Common Law, and neither of them in Chancery; and the Chancery hath not Jurisdiction therein further than upon some occasion to examine Witnesses, or discover Evidences (if concealed) in order to a Trial at Law, or Trials at Law, unless there were other Circumstances of equity, as burning or destroying of the Writings, or the Will by the Defendant, or the like Equity, which wants in this case.

The four Courts of Chancery, Kings-Bench, Common Pleas and Exchequer, the great Courts where Justice is administred; are distinguished by several bounds, which neither of them may transgress; the Kings-Bench may not judg of Trusts, but it and other Courts at Common Law judg of Free holds, as occasion is; but as these Courts cannot judg of Trusts originally. Exchequer-Chamber is another Court than that of the Exchequer, and is a Court of Equity. So neither may Courts of Equity or the Chancery try any mans Free-hold in the Court of Equity there. And therefore in the Case in question, the Chancery hath no Jurisdiction to try either the one point of Fact, or the other above mentioned, or direct a Trial thereof, or on trial determine the same in this case, and may as legally try matter of Felony or Life as well as Free-hold, and such proceedings in Chancery is against the Common Law, divers Statutes, and must bring in an Arbitrary Power over the Inheritances and Freeholds of the Subject.

And if it were admitted that the direction of a Trial were legal, yet to conclude by one Trial for matter of Inheritance, is against not only Equity (as I conceive) and against the practice of the Chancery in like cases, but against the Common Law, where no man is concluded for his Inheritance by any one Trial, unless it be in a Writ of Right, where one Trial by Battle, or grand Assize, or Knights of the Jury guarded with Swords, &c. give their Verdict; and in regard of the solemnity is small.

And if the Case be truly put, if any favour must be given or extended, the Case of the Defendant seems to be most capable of it, for there is a Guardian against the title of his Ward or Pupil: 2. Such a Guardian as had the custody of the Writings, and did peruse them, if he was faithful to his Trust, and who yielded the Possession to his Pupil; which title now he quarrels with. And here is the Oath against his pretence made Judicially by such persons, as if the Plaintiff have any title to overthrow the Will, had the same reason and title the Plaintiff hath.

*MAYNARD*, Octob. 6th. 1677.

The Opinion of Sir *William Jones*.

**T**He matter in question being, whether the Lands in dispute were the Inheritance of *Andrew Barrett*, or of his Wife *Katharine*: I conceive this is a matter purely determinable at the Common Law, and that the Court of Chancery ought not to bind either party by a Decree from claiming or suing at Law for his right. 'Tis true, the Chancery may admit of Examination of Witnesses to perpetuate their Testimony touching the Will or other matter to prove the Right; but here is no ground for a Decree, but the Parties ought to be left to Law. I see no ground in this case for directing a Trial; but to hinder a new Trial, or to bind the Parties from going to Law, as this case is, where there is no mixture, or shadow of Equity, would be most unjust.

I think the Evidence most strong for the Defendant; and seeing Mr. *St. Leger* can have no title but under the Will of Sir *William*, I think the answer of Sir *William* which swears the Intail, ought to be of great force against Mr. *St. Leger*. That Claims from him also besides the Will, the ancient Offices, and those other things done by *Katharine*, is a strong Evidence against any who shall claim the Land as her Inheritance.

*William Jones*, Sept. 25. 1677.



*The Opinion of Sir Fran. Winnington.*

1. **U**Pon consideration of this Case, I am of opinion, That this Case as 'tis stated, is not proper for the Court of Chancery, to give any relief upon; but it may be proper to discover Writings, or preserve the Testimony of Witnesses, but as to the title it is purely at Law on both sides, the Plaintiff claims by the Will, the Defendant claims by an Intail, and by the Will; but the main question is, Whether the Lands, or any part, were Intailed, which can never be a question for equity, but meerly determinable at Law.

2. As for the directing the Issue at Law, and the Trial that hath been had, God forbid that one Trial should be final: If so, what is become of all the common and Statute-Laws which are the Inheritance of the Subject? the parties may proceed from an Ejectment gradually, to a Writ of Right, before the Inheritance shall be bound at Common Law; besides 'tis considerable to know what Decree can be made upon such a Verdict; where is the title, in equity or conscience on either side? both being in equal degree in a Court of Conscience, but if either preferable, the Heir Male; but here is neither Purchaser, nor trust, for the Court to have a regard unto, but all the Court of Equity can do is to determine which of the parties hath the legal Title, which is not within the Jurisdiction of the Chancery.

3. The last question seems doubtful; 'tis plain the Devisor intended the Defendant should have some considerable part of the Estate, for he directs several sums to be raised during his Minority; but this is likewise a question of Law, and not of Equity, and must be also determined at Law.

*Fra. Winnington, 7th. Octob. 1677.*

*The Opinion of Mr. Heneage Finch, Solicitor General.*

**I** Do conceive there is no question in this Case but what is either a question of Fact, or a question of Law: That is first, Whether there were any Lands Intailed? Secondly, Whether that Intail were well made? Thirdly, What Lands doth pass, upon the whole matter, by the words of this Will? And none of these are determinable any where but in a Court of Law, the Fact by a Jury, and the Law upon that Fact by the Court; and I do not see any matter of equity in this Cause which the Court of Chancery can ground any Decree on to bind the Right of this Land, especially in favor of the Guardian to the disherison of his Pupil, who is Heir at Law. But however I do humbly conceive it will be very hard to deny a new Trial, if it be asked first; because by Law he is Intitled to bring a new Action. Secondly, the Chancery never enjoins any Suit for quitting the Possession upon one Trial only. Thirdly, because there is new Evidence discovered since the Trial, which the Defendant ought to have the benefit of.

I do likewise conceive, that no more shall pass by the words of this Will, but what the Testator took to be Lands in fee, and that the Lands he looked upon to be Intailed, though they were not actually so, will descend to the Heir.

*Heneage Finch.*

*Sir John Churchill's Opinion.*

**I**N this Case the Questions arising seems to me to be matters meerly proper to be determined at the Common Law, and no impediment appears but that the Complainant if he have right may have a full remedy there; and that is an intrusion upon common right for Courts of Equity to determine of any mans Free-hold where there is not an Equity, wherein the Common Law cannot help, or that there is some Bar or hindrance; there the Plaintiff cannot proceed at Law to try the right, and the Plaintiffs coming in by a voluntary devise cannot pretend to any assistance in a Court of Equity; nor can *Mr. Barrett* have relief there, but must stand and fall upon his Legal Trial upon the validity of the Will; and this hath been, and is the course of Chancery here in *England*, and there in case of any Trial directed upon a Deed or Will upon which there must be an Execution directed and decreed, No person in a matter of any value is concluded by any single Trial in the Common Law.

*John Churchill, 16 Octob. 77.*

*The Opinion of Mr. Keck.*

**I** Am clear of Opinion that the Chancery hath no Jurisdiction in this Case further than by receiving a Bill to inable the Plaintiff to make proofs of *Sir W. Barretts Will in perpetuam rei memoriam*, but such Cause ought not to be heard or determined in Chancery, nor any further proceeded in there, than only to the Examination of Witnesses; and if this Case were in *England*, in case the Plaintiff should set it down to be heard, he must pay cost for that days attendance; but the Chancery ought not to direct any Trial at Law, but as it is a question of a title at Law in an Inheritance, it is there only determinable, where no one Trial is final, but either party pretending may try his right as oft as he please; it may be considered if it be not to alter the condition of all Free-holds, and consequently to out the right of Trials by Juries to introduce such a Jurisdiction in Equity as hath been exercised in this Cause; and the Chancery have gone too far already in directing a Trial; but it ought not to decree thereupon or hinder any other Trial. And as to the Intention of *Sir William's Will*, what shall be taken to be Intailed Lands, and what not, that question will fall in upon a Trial at Law, and is properly there considerable, and not in Equity; and it's a strong Evidence of *Sir William's* intention, That all the Lands he swore in his answer, to be Intailed Lands, were so taken to be when he made his Will, and upon the whole matter the Evidence seems very strong for *Mr. Barrett*; but of that the Jury are the Judges.

*Anto. Keck, 2 Octob. 77.*



**THE several DEPOSITIONS taken about the Proof of Sir WILLIAM BARRET's Will in BRISTOLL,** by Vertue of two Commissions out of the High Court of Chancery in Ireland, and the true Relation of what Sir William declared at the Perfection of his said Will, That he left his Estate to a Boy in Ireland to support the Name of the Barrets; and did deny to alter his Will at the Request of his Mother, who would not have his Estate left to the said Barret; to which Sir William answered, That since God had given it to him, he would not take it from him; as may appear by what followes.

Interrogatories to be administred unto Witnesses, to be produced and examined on the part and behalf of John St. Leiger Esq; Plaintiff, William Meade, John Meade and Mary his Wife, John Barret a Minor by his Guardian, Justin Mac-Carthy, and John Barret, Defendants.

**I**mprimis. Do you know that the said Sir William Barret did the sixteenth of February One thousand six hundred seventy and two, or at any other time, and when, make his last Will and Testament in Writing? and is the Writing now produced unto you the same Will? and by whom was the said Will written? and how long was it before the said Sir William's Death? and in what Condition of mind and Judgment was he then of to your apprehension? and was it of his own free motion, or by the Persuasion of any other? did you see the said Sir William sign the same? and were you present at the publishing thereof? and are you a subscribing Witness to the said Will?

Ri. Shee.

Boate pro Quer.

15 Junii, 1676. Inter Tho. Tilson, Regist.

**C**arolus Secundus Dei Grat. Angl. Scot. Fran. & Hibern. Rex, Fidei defensor, & Robert Yeoman mil. Thomæ Smith arm. Commission. elect. ex parte Johan. St. Leiger arm. quer. George Lane, Rich. Christmalls, Commission. elect. ex parte Will. Meade arm. Johan. Meade arm. & Maria uxor ejus, Johan. Barret Minor per Guardian. Justin Mac-Cartha, & Johan. Barret, Defend. salutem. Sciat. quod dedimus vob. unum vel duobus vestrum plenam potestatem & autoritatem per Present. Testes quoscunque ex utraque parte de & super Interrog. vobis Exhibend. diligent. Examinand. & ideo vob. trib. vel duob. mandamus quod ad certos dies & loco qua vos tres sive duo vestrum ad hoc providerint, testes present. coram vob. trib. vel duob. vestrum venien. faciat vel evocet. ad ipsos testes & eorum quemlibet de & super Interrog. predict. super Sacrament. suum coram vob. trib. vel duob. trib. vel duob. vestrum, per sanct. Evangel. Dei Corporal. prestand. diligent. Examinand. & Examination. id. sic Reciperit Inscript. inpergand. Redigatt. & cum ill. sic reciperit nob. inde in Canc. nostra Hibern. quarto die Novembris prox. futur. ubicunque tunc fuer. sub Sigill. vestros unum sive die unum Clause distinct. & a parte mittat. sive tres vel unum vestrum mittat. una cum Interrog. predict. & hoc proviso quod defend. act. Commission. fid. sive alter eorum habeant.

A spacium quatuordecim dier. de die & hoc Execution. hujus Com. ant. Execution. ejusdem Testes Arbitrar. Com. Effex hoc ten. gen. Regn. vid. Hibern. apud Dublin quarto die Junii, Anno Regn. nostr. xxvii. Temple, Mag. Roll.

Boate. Executio istius Commission. patet in quadam Scheda hunc annex. sic Respondent.

Robert Yeomans, Richard Christmalls.

Depositions of Witnesses taken on the part and behalf of John St. Leiger Esq; Complainant, against William Meade, John Meade and Mary his Wife, John Barret a Minor by his Guardians Justin Mac-Carthy and John Barret, Defendants, at Bristoll in the Kingdom of England, the eighteenth day of August, in the year of our Lord God One thousand six hundred seventy and five, upon the holy Evangelist of God, on certain Interrogatories hereunto annexed, before Sir Robert Yeomans Knight and Baronet, Commissioner on the part of the Complainant, and Richard Christmalls Merchant, Commissioner on the behalf of the Defendants, by vertue of a Commission out of his Majesties High Court of Chancery in Ireland, to them and others, or any two of them directed, bearing date the fourth day of June, in the year aforesaid.

**A**nne Brinsden of the City of Bristoll in the Kingdom of England, Widdow, aged forty years or thereabouts, being duely sworn upon the holy Evangelist of God, and Examined, deposeth and saith as followeth.

1. To the first Interrogatory this Deponent saith, That she very well knows, that Sir William Barret Knight, deceased, did the sixteenth day of February, in the year of our Lord God One thousand six hundred seventy and two, or thereabouts, make his last Will and Testament in Writing, about three or four dayes before his death, and that the Writing now produced to her at the time of her Examination, dated the sixteenth day of February aforesaid, is the same Will, to which this Deponents name is subscribed as a Witness, and that she was present at the time of the said Sir Williams perfection thereof: And this Deponent further saith, that the said Sir William at the time of making his said Will, was in perfect Mind and sound Judgement, to her this Deponents apprehension, and so continued till the time of his death: Her cause of Knowledge is, that the said Sir William lay sick and dyed at this Deponents house, and during his sickness she this Deponent was constantly with him; and this Deponent further saith, that she verily believes that the said Will was written with the said Sir Williams own hand, and believes the same was made of his own free accord, without the persuasions of any except this Deponent, who finding him weak, desired him to make his Will, and settle his Estate; and further she cannot depose.

Anne Brinsden.

Capta & Jurata coram nob. decimo octavo die Augusti Anno Domini One Thousand six hundred seventy and five.

A true Copy, Exam. per G. R Dep. Ex.

Robert Yeomans, Rich. Christmalls.

A

John



*John St. Leiger Esq; Plaintiff,  
John Barrett Esq;  
Heyward St. Leiger, and  
Dame Barbara his Wife,  
Defendants.*

*Interrogatories to be Administred to Witnesses to be produced, Sworn and Examined, on the part and behalf of the said John Barrett, one of the Defendants.*

**I***mprimis*, Do you know the Parties Plaintiffs and Defendants, or each, or either, and which of them? and did you know Sir William Barrett Baronet? how long did you know him? on what occasion did you know him? when and where did he dye? declare your knowledge distinctly to each particular.

2. *Item*. Do you know that Sir William Barrett made any Will? are you Witness to it? what did he declare to you concerning the same? to whom did he thereby leave all, or the greatest part of his Estate? did you hear him tell that any person was to be his Heir? and who did he mean thereby, as you know, have heard, or believe? what did you hear him say concerning his Estate, and who was to have it by his Will, or to Inherit it after his Death, as he declared? when did you hear him discourse of it? was it before he made his Will, or after? and how long, and on what occasion did you ever hear him speak of the said Defendant John Barrett? and what did he say concerning him? did you ever hear him say any other person was to have after his Death any part of his Estate and how much and who was the person? declare your knowledge, hear-say and belief, to each particular distinctly, together with the Causes and Circumstances of each.

3. *Item*. Do you know, or have you heard from himself the said Sir William Barrett, that any Person was Heir general to him, and who was the Person, and how Related? declare your knowledge, hear-say or belief to each particular.

*Warberton.*

*Bat. Stapole.*

22th February, 1676. *Int. per Tho. Tilson. Regist.*

*Depositions of Witnesses taken at the house of Anne Brinsden Widdow, commonly called or known by the Name or Sign of the Lamb Tavern, situate in or near Tucker-street, in the Parish of St. Thomas the Apostle, within the City of Bristol, on Monday the second day of April in the nine and twentieth year of the Reign of our Sovereign Lord Charles the Second, by the Grace of God of England, Scotland, France and Ireland, King, Defender of the Faith, &c. before Sir Robert Cann Knight and Baronet, and Thomas Alcock, Commissioners Chosen on the part of the said Plaintiff, and John Grante and George White Commissioners chosen on the part of John Barret Fitz-James one of the Defendants, by vertue of his Majesties Commission issued out of his Majesties high Court of Chancery in Ireland, to them the said Commissioners directed, for the Examination of Witnesses in a Cause there Depending between the said John St. Leiger Esquire, Plaintiff, and the said John Barrett, Fitz James and others Defendants.*

*1 Depon.* **A***Ne Brinsden* of the City of Bristol Widdow, aged forty five years, Sworn und Examined, Deposeth as followeth, viz.

1. To the first Interrogatory this Deponent saith, that she doth know the Complainant John St. Leiger Esq; but doth not know the Defendant John Barrett; and she further saith that she did know Sir William Barrett Knight deceased in this Interrogatory named, and did know him ever since the first War with the Dutch, since his Majesties restauration, about which time he came as a Guest to this Deponents house in Bristol, and there Lodged; and this Deponent further saith, that the said Sir William Barrett came as a Guest to this Deponents house in Bristol on or about the twelfth day February, which was in the year of our Lord God One thousand six hundred seventy and two, and Lodged there; he being then sick and weak, and on or about the five and twentieth day of February in the same year of Lord One thousand six hundred seventy and two, this said Sir William dyed in this Deponents said house; and further to this Interrogatory this Deponent saith she cannot Depose.

2. To the second Interrogatory this Deponent saith, that the said Sir William Barrett in the Interrogatory named, made his Will in Writing in the time of his sickness in this Deponents house, mentioned in this Deponents Answer to the first Interrogatory, about six dayes before his Death to the best of this Deponents remembrance, he being then of sound Mind and Memory, and of perfect understanding as this Deponent verily believes, he having penned his said Will with his own hand as this Deponent also believes, and as the said Sir William Barrett himself told this Deponent when he desired her to be a Witness to the same Will; and this Deponent further saith, that at the desire of the said Sir William Barrett she was a Witness, and set her name as a Witness to the same Will, and he the said Sir William Barrett then told her, that the Paper writing that he then had in his hand was his last Will and Testament, or to that effect; and at the same time this Deponent saith, the said Sir William Barrett desired her to bring up with her one of her Servants to be another Witness to the said Will, which was accordingly done; and when this Deponent had so set her name as a Witness to the said Will, the said Sir William Barrett then declared to this Deponent that the greatest part of his Estate was to go to a poor Boy, who for ought he knew never wore shooes on his Feet, and that he was to be his Heir, or to that effect, but remembers not that he named the said Boyes name, and said further, that since God had given it to him he would never take it from him, and said further that he had in his Will left his Uncle St. Leiger to be his Guardian, for that he also said he was a brave well-bred Gentleman, and at the same time he said that a part of his Estate which was not intailed was by him left to his Uncle St. Leiger: and this Deponent further saith that this deponents said servant whose

name



name was *John Field* and another Person who was a Servant to the said *Sir William Barrett*, and went by the name of *George Turner* were also witnesses, and did at the like desire of the said *Sir William Barrett* set their Names as Witnesses to the said Will, and as to the Defendant *John Barrett* this Deponent Remembers not that the Testator named any such name, but said that if his Heir, ( meaning the said poor Boy, were Capable of Education he would have it bestowed upon him, if otherwise, he should ) leave him such an Estate as might Match him to a Gentlewoman, and that although he were not a Gentleman, he might beget a Son that might be a Gentleman, that so the said Estate might come to a Gentleman again.

3. To the third Interrogatory this Deponent saith, that the said Testator did at the forementioned time of making his said Will say and declare, that the aforementioned poor Boy was his Heir, and that he was to enjoy all his Estate saving what he had given to his Uncle *St. Leiger*; and to the best of this Deponents remembrance, the said *Sir William Barrett* then said, the poor Boy was related to him, but how, she remembers not.

2 Depon. *Elizabeth Hatchwell* Wife of *John Hatchwell* of the City of *Bristol* Tapster, aged twenty nine years or thereabouts, Sworn and Examined, deposeth as followeth.

1. To the first Interrogatory this Deponent saith, that she knoweth the Plaintiff *John St. Leiger* Esq; in the Interrogatory named, and did know him ever since the last Summer, and did know *Sir William Barrett* Bar. in the third Interrogatory named in his life time, and the occasion of this Deponents knowing him was his being a Guest in the house of Mrs. *Brinsden* where this Deponent was then and now is a Servant in the said City of *Bristol*, in which house he the said *Sir William Barrett* fell sick and dyed several years ago, but how long ago, this Deponent knoweth not; but this Deponent knoweth not any other of the parties in the Interrogatory named.

2. To the second Interrogatory this Deponent saith, that she doth not know, but hath Credibly heard that the said *Sir William Barrett* in the Interrogatory named made a Will, but this Deponent is not a Witness to any Will of his; and this Deponent farther saith, that she watcht with the said *Sir William Barrett* in the time of his sickness, about a week before his Death, as near as this Deponent can remember, and at that time she heard the said *Sir William Barrett* say, that he would give his Estate to a young man whom he called by the Name of young *Barrett*, who as he the said *Sir William* also said was poor and had neither Stockings nor Shooes to wear, or to the like effect, and charged his man who then served him and was there present also to wait on him the said young man, and further to any other particulars of this Interrogatory, this Deponent saith she cannot Depose.

3 Depon. *Hannah Austin* Wife of *Thomas Austin* of the City of *Bristol* Mariner, aged twenty five years or thereabouts Sworn and Examined, Deposeth as followeth, viz.

1. To the first Interrogatory this Deponent saith that she knoweth neither of the parties Plaintiff or Defendants, but saith that she did know *Sir William Barrett* deceased, in this Interrogatory named in his life time, for that in the Month of *February* about four years since as near as this Deponent can remember upon a Sunday she this Deponent being then a Nurse was sent for to the said *Sir William Barrett*, to give him suck at her Breast in the time of his sickness, where he lay sick in the house of Mrs. *Anne Brinsden* Widdow in *Bristol*, of which sickness he dyed there, and further to this Interrogatory sayes she cannot Depose.

To the second Interrogatory this deponent saith that she heard *Sir William Barrett* at several times in his sickness and a little before his death say that he had left his Estate to one *Barrett* a poor Lad in *Ireland* to keep up the name of the *Barretts*, and being perswaded by his Mother who was with him in his said sickness and perswaded him to alter his Will and not Leave his Estate to that Lad he refused so to do saying that he had settled his Estate before and would not alter it and that the said young Lad meaning the said *Barrett* should enjoy his Estate and according as it was settled to Keep up the name of the *Barretts* and that because he was a poor Lad he thought he was fittest to have his Estate or to the like effect and thereupon the said *Sir William Barrett* ordered one *Charles* who then served him to go to the said young Lad *Barrett* and serve him as he did the said *Sir William Barrett*; and further to any other the particulars of this Interrogatory or to the last Interrogatory now Read unto her she this deponent saith she cannot depose.

4 Depon. *Lettice Thomas* Wife of *Hopkin Thomas* of the City of *Bristol* Brewer aged thirty four years or thereabouts sworn and Examined deposeth as followeth.

1. To the first Interrogatory this Deponent saith she Knows not any of the parties in the Interrogatory named.

2. To the second Interrogatory this Deponent saith that she hath Credibly heard, although she doth not Know that *Sir William Barrett* in the Interrogatory named did make any Will, and that being a servant with Mrs. *Anne Brinsden* about four years ago when the said *Sir William Barrett* lay sick at the said Mrs. *Brinsdens* house where he afterwards dyed, she heard the said *Sir William Barrett* say he had by his Will given and left his Estate to a poor Boy in *Ireland* whose name was *Barrett*, who as the said *Sir William Barrett* also said never wore shooes as ever he Knew, and further saith that the said boy was to enjoy his Estate after his death and further to this Interrogatory this Deponent saith she cannot depose.

3. To the third Interrogatory this Deponent saith she cannot depose.

*Robert Cann,*  
*Thomas Alcock,*  
*John Grant,*  
*George White.*

*Copia vera,*

*Westley Ex.*

Here followeth the Cross Interrogatories to be administred unto the Witnesses that are to be Produced, Sworn and Examined on the part and behalf of *John Barrett Fitz-James*, one of the Defendants, at the Suit of *John St. Leiger Esq;* Complainant.

*Imprim.*



*Imprim.* **D**O you know the parties, Plaintiff and Defendant? have you any promise of, or expectations or hopes of any Reward, for the Defendant or his Agents, or any other person, for or touching your Deposition in this Cause?

2. Did you know Sir William Barrett? when did he dye? did he make any Will? was the same by his own free motion, or by the perswasion of any other? after the Will made, did he declare, shewing it to the Witnesses, This is my last Will and Testament; or herein is my last Will and Testament, or the like? Are you a subscribing Witness to the said Will? was he of perfect memory when he made the said Will? and do you not believe that his Intentions were according to the said Will, or do you believe he intended otherwise than by his written Will is expressed? Declare your knowledge herein.

3. Did you hear Sir William Barrett any time say, a Boy that never wore Shooses should be his Heir? and if so, did he say it before or after his written Will made and witnessed by you? had he a mind to make his Will by calling Witnesses, or naming an Executor, at the time he said those Words of the Boy.

*Boate pro Quer.*

23 Feb. 1676.  
*Inter Tho. Tilson Reg.*

*Ex parte John St. Leiger Esq; Quer.*

**A**nne Brinsden formerly Sworn and Examined on the part of John Barrett Fitz-James one of the Defendants, and now again Sworn and Examined on the part and behalf of the said Complainant John St. Leiger, deposeth as followeth, viz.

1. To the first Interrogatory this Deponent saith, that she doth know the Complainant John St. Leiger, but doth not know the Defendant John Barrett; and saith, that she hath not been promised, neither doth she expect any Reward of or from the said Defendant John Barrett, nor any for him nor any others touching or relating to the giving her Testimony in this Cause.

2. To the second Interrogatory this Deponent saith; that she did know Sir William Barrett deceased, in this Interrogatory named, in his Life-time, and saith, that he dyed in the Month of February, which was in the year of our Lord God One thousand six hundred seventy and two; and saith, that the said Sir William Barrett, a short time before his death did make a Will, and as she verily believeth by the motion of her this Deponent, she perceiving him to be very ill at that time, told him, it was necessary for him to make a Will, to avoyd Controversie and Suits of Law that might afterwards happen; and after he had so made his Will, he did in the presence and as hearing of this Deponent declare the same to be his last Will and Testament; and thereupon she did subscribe her Name as a Witness thereunto; and saith, that she verily believeth that the said Sir William Barrett was at the time of the making his said Will, of sound and perfect Mind and Memory; and as to the Intentions of the said Sir William Barrett at that time she cannot declare or set forth the same, any otherwise than she hath already declared and set forth in her Deposition to the Interrogatory to her administred on the behalf of the Defendant John Barrett, to which for the more certainty she referreth her self.

3. To the third Interrogatory this Deponent saith, that after the said Sir William Barrett had made his Will, and this Deponent had subscribed her Name as a Witness thereunto, the said Sir William told this Deponent, and did say, that a Boy that never wore Shooses should enjoy the greatest part of his Estate; and this Deponent further saith, that she did not hear the said Sir William Barrett at any time say or declare any thing of an Executor to the said Will, and more to this Interrogatory she deposeth not.

**H**annah Austin Sworn and Examined on the Defendants part, now again Sworn and Examined on the Plaintiffs part, deposeth as followeth, viz.

1. To the first Interrogatory this Deponent saith, she knoweth not any the parties to this Suit.

2. To the second Interrogatory this Deponent saith, she knew Sir William Barrett in the Interrogatory named in his life-time, and for the occasion of her coming to know him, and the time of his death, she referres her self to her former Depositions on the Defendants part, and denyes that she ever had or doth ever expect any Reward from the Defendant or any other for her being a Witness in this cause: And further this Deponent saith, she doth not know that the said Sir William Barrett made any Will, although she saith, she heard the said Sir William the day before his death say, that he had made his Will, and thereby settled his Estate to young Barrett a poor Lad living in Ireland, and never heard him make any mention of John St. Leiger, Esq;

3. To the third Interrogatory this Deponent saith, that she never heard Sir William Barrett say, that a Boy that never wore Shooses should be his Heir, although she heard him say, that a poor Lad living in Ireland, whose name was Barrett, should have his Estate to bear up his Name; but at the time when he used those words concerning the Boy, she neither heard him call any Body as Witness to those words, nor name him the said Boy as Executor.

Robert Cann, Geo. White,  
Thomas Alcock, John Grant.

A True Copy, Exam. per  
G. R. Dep. Ex.

*This Will was made by Sir William Barrett, not in kindness to Capt. St. Leiger, as he pretends, but at the Request of Mrs. Brinsden his Landlady, who when press'd by her to make his Will, he spake these words to her, viz. Landlady, Pray Remember what I tell you when I am Dead, That I leave my Estate to this poor Boy in Ireland: Which person now lives in Bristoll, and will appear before your Lordships to justify the Truth thereof, if so required.*



The JUDGES Opinions delivered before His Grace the Lord Chancellor of *Ireland*, in the Cause between *John St. Leger*, Esq; Plaintiff, and *John Barrett*, Esq; Defendant. Taken by the Register of the High Court of Chancery, *Saturday* the 8th of *February*, 1678.

## P R E S E N T,

Lord Chancellor,	}	Mr. Justice Johnson,
Lord Chief Justice Booth,		Mr. Justice Jones,
Lord Chief Baron,		Sir Richard Reynell.
Sir Richard Kennedy,		

**T**HE Notes of the 10th of May, 1678, Read. Lord Chancellor, the Notes are short in this, for His Grace gave a Reason why this Court may determine points of Law, was because the Court may have the Judges present.

*The latter part of the Notes 9th of Decemb. Read.*

Sir Richard Reynell, That upon the hearing of this Cause, several points fell out; that of the Intail, and that of the Remitter: As to the Intail, the Court by Approbation of the parties, sent it to be tryed, and the Jury said they did not find any Intail, and the Court declared the Verdict sufficient and satisfactory. So that of the Intail is now out of doors: but the Defendant saith, Though there were no Intail, yet the Intent of the Will is for him, and for the Opinion of the Judges, upon the Construction of the Will the Judges called together; saith, There was an Original Equity, because the Witnesses in *England*. Several Cases have been put concerning the favourable Construction of Wills; for that saith, Where Lands are given by a Will, the words must carry it; the Defendant hath urged the Preamble and Body of the Will, the Intail by Reputation. Sir William Barrett's Answer, That the Testator was consulting Justice and Conscience. Pray where was Justice and Conscience, to disinherit the Right Heir? That of Justice and Conscience may be broken off after the wrangling World: but if you carry Justice and Conscience to the Intail, conceives that of Justice and Conscience is subservient to the Construction, for the Plaintiff as well as for Defendant. You must look upon it now, as if there were no Intail; and if so by the words of the Will, it must be, as if he had said the Lands, for which there is no Intail, must go to my Uncle *St. Leger*: It cannot be denied but the greatest part of the Lands came by the Mother, and that might raise a doubt in Sir William, that the Lands were not Intailed; and therefore he saith, Those Intailed, I give to those; not Intailed I give to the Plaintiff; doth acknowledge, that if he had referred to the Inquisitions, the Case would have been stronger; as in *Mollineux's* Case saith, It is not left to the Defendant by Name, nor what Estate, nor what Lands, only to the Right Heir, saith, He hath looked over all the Witnesses on both sides; and it seems to him, that there are more Witnesses, and of better quality on the part of the Plaintiff, than on the part of the Defendant. The use he makes of this, is, That there would be great inconvenience to the Subject to allow Construction *de horsé*; concludes as to this point, that the words of the Will, and not the intent ought to govern: As to the Inquisitions, must look upon as a Collusion or Contrivance; for here is an Estate of 1000 *l. per Annum*, and yet the person concerned knows nothing of them. Then the Feoffment by *Andrew*, was but a Contrivance to draw his Wives Estate to him, and enable him to make Intail; conceives that neither the Witnesses, nor the Inquisitions, nor the Answer ought to give the Court ground to dispose of the Lands otherwise than according to the words of the Will. As to Sir *Moyle Finches* Case, there the Mannor had been once a Mannor *de facto*, but dissolved by accident, so not a-kin to this Case. Then for the Case *Hob. 32.* there was a Wife *de facto*,